In the Matter of Arbitration Between
Teamsters Local 320, and Todd County

OPINION AND AWARD

BMS Case No. 06-PA-1147

GRIEVANCE ARBITRATION

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of Teamsters Local 320
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On behalf of Todd County
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JURISDICTION

In accordance with the Labor Agreement between Todd County Board of Commissioners and Minnesota Teamsters Public and Law Enforcement Employees' Union, Local No. 320, January 1, 2006 - December 31, 2007; and, under the jurisdiction of the State of Minnesota, Bureau of Mediation Services, the above grievance arbitration was submitted to Joseph L. Daly, Arbitrator, on September 18, 2006 at the Todd County Government Center, Long Prairie, Minnesota.

Post-Hearing Briefs were filed by the parties on September 22, 2006 (Todd County) and September 25, 2006 (Teamsters Local 320). The decision was rendered by the Arbitrator on October 26, 2006.

ISSUE AT IMPASSE

The Union and the Employer agree that the issue is:

Did Todd County violate the "ME TOO" clause, located in Appendix A of the Labor Agreement, by agreeing to pay $3,000 into the HCSP accounts of the county attorney, county auditor-treasurer,

county recorder and sheriff, while failing to provide the same benefit to Teamsters Employees? [Joint Statement of Issues]

The potentially applicable contract provisions include:

ARTICLE X. SICK LEAVE

10.1 All regular full-time employees shall be credited with sick leave at a rate of .0462 hours per compensated hour served (this equivalent to eight (8) hours per calendar month of employment), to a total accumulation which may not exceed 1,040 hours, or one hundred thirty (130) days.

10.5 At the time of the employee's death, retirement, or resignation, forty percent (40%) of all accumulated sick leave shall be paid to the employee providing the employee is not PERA eligible and has not been discharged from his/her job. An employee who is eligible to receive PERA retirement benefits will contribute 100% of their accumulated, available sick leave benefits towards to the post retirement health insurance savings plan offered by MN State Retirement System (MSRS).

ARTICLE XIV. GRIEVANCE PROCEDURE

14.1 Definition of a Grievance. A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement.

14.2 Union Representative. The Employer will recognize Representatives designated by the Union as the grievance representatives of the bargaining unit, having the duties and responsibilities established by the Article. The Union shall notify the Employer, in writing, of the names of such Union Representatives and of their successors when so designated as provided by Section 5.2 of this Agreement.

14.3 Processing of a Grievance. It is recognized and accepted by the Union and the Employer that the processing of grievances as hereinafter provided, are limited by the job duties and responsibilities of the employees and shall therefore be accomplished during normal working hours only when consistent with such employee duties and responsibilities. The aggrieved employee and a Union Representative shall be allowed a reasonable amount of time without loss in pay when a grievance is investigated and presented to the Employer during normal working hours, provided that the Employer and the Union Representative have notified and received the approval of the designated supervisor who has determined that such absence is reasonable and would not be detrimental to the work programs of the Employer.

14.4 Procedure. Grievances, as defined in Section 6.1, shall all be resolved in conformance with the following procedures.

Step 1. An employee claiming a violation concerning the interpretation or application of this Agreement, shall, within twenty-one (21) calendar days after such alleged violation has occurred, present such grievance to the employee's supervisor as designated by the Employer. The Employer-designated representative will discuss and give an answer to such Step 1 grievance within ten (10) calendar days after receipt. A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing, setting forth the nature of the grievance, the facts on which it was based, the provision or provisions of the Agreement allegedly violated, the remedy

requested, and shall be appealed to Step 2 within ten (10) calendar days after the Employee-designated representative's final answer in Step 1. Any grievance not appealed to writing to Step 2 by the Union within ten (10) calendar days shall be considered waived.

Step 2. If appealed, the written grievance shall be presented by the Union and discussed with the Employer-designated Step 2 representative. The Employer designated representative shall give the Union the Employer's Step 2 answer in writing within ten (10) calendar days after receipt of such Step 2 grievance. A grievance not resolved in Step 2 may be appealed to Step 3 within ten (10) calendar days following the Employer-designated representative's final Step 2 answer. Any grievance not appealed in writing to Step 3 by the Union within ten (10) calendar days shall be considered waived.

Step 3. If appealed, the written grievance shall be presented by the Union and discussed with the Employer-designated Step 3 representative. The Employer designated representative shall give the Union the Employer's Step 3 answer in writing within ten (10) calendar days after receipt of such Step 3 grievance. A grievance not resolved in Step 3 may be appealed to Step 4 within ten (10) calendar days following the Employer-designated representative's final Step 3 answer. Any grievance not appealed in writing to Step 4 by the Union within ten (10) calendar days shall be considered waived.

Step 4. A Grievance unresolved in Step 3 and appealed in Step 4 by the Union shall be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971, as amended. The selection of an arbitrator shall be made in accordance with the rules established by the Minnesota Bureau of Mediation Services.

14.5 Arbitrator's Authority

A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the *specific issue(s)* submitted in writing by the Employer and the Union, and shall have no authority to make a decision or any other issue not so submitted.

B. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules, or regulations have the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) days following the close of the hearing or the submission of briefs by the parties, whichever be later, unless the parties agree to an extension. The decision shall be binding on Employer and the Union and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented.

C. The fees and expenses for the arbitrator's services and proceedings shall be borne equally by the employer and the Union provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceeding, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings the cost shall be shared equally.

14.6 Waiver. If a grievance is not presented within the time limits set forth above, it shall be considered waived. If a grievance is not appealed to the next step within the specified time limits or any agreed extension thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the Union may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual agreement of the Employer and the Union.

ARTICLE XVIII. POST RETIREMENT HEALTH INSURANCE

18.1 The County agrees that the full-time employee shall contribute their accumulated sick leave per Article X, Section 10.5 and two percent (2%) of gross wages monthly into the Post Retirement Health Insurance Savings Plan through the Minnesota State Retirement System (M.S.R.S.).

APPENDIX A

2006 Schedule

January 1, 2006	Forty cents ($.40) per hour increase to base wage. Step advancement on 6/25/06. Employees hired after October 1, 2005 shall be eligible for a Step increase on their anniversary date.
January 1, 2007	Two percent (2%) increase to a base wage. Step advancement on 6/25/07. Employees hired after October 1, 2005 shall be eligible for a Step increase on their anniversary date.

"ME TOO" in the event the County negotiates a higher rate of pay or greater insurance benefits for any other groups/unions or employee of the County, that rate will be extended to this bargaining unit.

FINDINGS OF FACT

1. On April 7, 2006, Minnesota Teamsters Public and Law Enforcement Employees' Union Local No. 320 filed a grievance stating in applicable part:

> CONTRACT ARTICLE(S) VIOLATED: 1.1, 18.1 Appendix A, and all other applicable provisions of the Labor Agreement.
>
> FACTS OF GRIEVANCE: On April 4, 2006 the Co. Board passed by Board Action to contribute into the HCSD a lump sum of $3,000 for the 4 year term for the Attorney Auditor-Treasurer, Recorder and Sheriff. This benefit of wages/insurance was not given to the courthouse bargaining unit violating the "ME TOO" clause (Appendix A) which was negotiated in "good faith".
>
> REMEDY REQUESTED: The Courthouse bargaining unit per the "ME TOO" have Todd County contribute into their HCSP a lump sum of $3,000 same as elected officials. Be made whole.
>
> [Exhibit No. 11]

2. During negotiations, Todd County requested that the Teamsters agreed to a 25 cent per hour increase in the rate of pay. Todd County expressed the desire to have an actual dollar amount, as opposed to a percentage pay raise, because it would allow the county to save money on the high-income employees. Teamster witnesses testified at the arbitration hearing they were led to believe that the elected officials were subject to the "ME TOO" clause negotiated into the Teamsters Collective Bargaining Agreement. Teamster Business Agent Joanne Derby testified that she drafted the "ME TOO" language. The "ME TOO" language does not specifically list elected officials in the language of the contract.

Commissioner Janet Goligowski, who helped negotiate the contract on behalf of the county, testified that the elected officials were not discussed as part of the "ME TOO" clause discussion because she was aware of the wage appeal rights available to them. [Post-Hearing Brief of Todd County at 5].

3. During the negotiations, the Board represented that they had $250,000 to work with in order to offer wage increases. Commissioner Goligowski agreed that the Board decided that the increased offer to employees, Unions, non-Union groups, and elected officials would be broken into cents-per-hour amounts based on the $250,000 the budget had available.

4. On January 31, 2006, the Todd County Board of Commissioners granted salary increases to their elected officials of forty cents per hour. Since the positions are all exempt, Commissioners assigned 2,080 hours per position. The increase per position totaled $832.00 per year. The county also settled all their Union contracts and supervisory and confidential staff at forty cents per hour increase for 2006.

On February 14, 2006, the elected officials in Todd County sued the county over their wages. The county sheriff, auditor/treasurer, recorder, and attorney all filed appeals alleging that their 2006 salary as established by the Todd County Board of Commissioners on January 31, 2006, was "arbitrary,

capricious, and in an unreasonable disregard for the responsibilities and duties of the office". Trial on the matter was set by the court.

The recorder, auditor and county attorney all have similar protections under Minnesota statutes. If they are not satisfied with the salary increase granted by the county board, they can appeal directly to the district court. [See Exhibit C-3, M.S.A. §384.151, subd. 7 (auditor-treasurer) M.S.A. §386.015, subd. 7 (recorder), and M.S.A. §388.18, subd. 7 (county attorney)]. The court's review is one of certiorari. If the court finds the Board acted in an arbitrary, capricious, oppressive or unreasonable manner, "it shall remand the matter to the Board for further action". [Id.]

The county sheriffs have a similar protection; however, the court is granted more authority in terms of authority. [See Exhibit C-4, M.S.A. §387.20, subd. 7]. The court's review of a sheriff's wage appeal is de novo. The court may, upon finding the salary to be arbitrary and capricious, set an appropriate salary for the sheriff.

5. The county board took into consideration the fact that the statutes require them to take into account the responsibilities of the office, the experience, qualifications and performance of each individual in setting the salary. Todd County agreed at the arbitration hearing that it "had not" taken such responsibities into account [See Post-Hearing Brief of Todd County at 2]. Todd County considered its likelihood of success in the court to be low. [Testimony of Commissioner Goligowski].

In an effort to settle the suits prior to trial, the county offered the elected officials $3,000 every four years (if re-elected) to be contributed by the county into a Minnesota State Retirement Systems Health Care Savings Plan. MSRS-HCSP. Each elected official must, in return, contribute 1% of their salary back into the HCSP. In settlement of the claims, the commissioners were not willing to offer more than the forty cent per hour increase to the elected officials. However, the commissioners believe that, since county employees can accumulate sick leave and severance benefits and elected officials cannot, the contribution to the HCSP for the elected officials would help balance out this inequity.

[Testimony of Commissioner Janet Goligowski]. The parties reached a settlement on these terms, and the elected officials suits were dismissed.

6. The basic contentions of Teamsters Local 320 are:

A. The only reasonable interpretation of the contract requires the county to provide the same $3,000 benefit to Teamster employees as provided to elected officials;

B. The county attorney, auditor, recorder and sheriff constitute both "employees" and a "group" and thus trigger the "Me Too" clause.

7. The basic contentions of Todd County are:

A. A publicly elected official is not an "employee" under the teamsters "Me Too" clause language.

B. Elected officials are not a "group/union" within the meaning of the language in the "Me Too" clause.

C. The settlement with the elected officials does not provide a "greater insurance benefit" or "greater rate of pay" than what is had by Teamster members.

D. If the county is required to advance $3,000 into a HCSP to each teamster, non-union, and AFSCME full-time regular employee, the total damage would be $456,000.00 every four years. Mass lay-offs would necessarily be the result.

DECISION AND RATIONALE

The Union contends the "Me Too" clause intended to incorporate the "elected officials" including the county attorney, auditor/treasurer, recorder and sheriff. Business Agent Joanne Derby drafted the "Me Too" language. However, she did not list the "elected officials" in the language of the contract. Rather, she listed "group/unions" and "employees" of the county.

Commissioner Janet Goligowski testified that the "elected officials" were not discussed as part of the "Me Too" clause discussion. She further testified she did not consider the elected official to be "employees" or "group/union" because she was aware of the wage appeal rights available to them.

Todd County personnel policies define an "employee" as follows: "A person holding a paid position within the county as defined by Minnesota Stat. §179A". [See Exhibit C-13 Todd County Policy Article II]. Minnesota Stat. §179A.03, subd. 14 defines "public employee" or "employee" as any person appointed or employed by the public employer except "elected public officials". [Exhibit C-14]. "Elected officials" are treated differently under both Todd County policy and the law. Regular employees do not have statutory rights to appeal salary determinations or obtain attorneys fees if successful. The only time "elected officials" are considered "employees" of Todd County is in terms of their eligibility for health and life insurance. [Exhibit C-13, Todd County Policy 5.1]. "Elected officials" and "employees" are provided identical health and life coverage.

Each public official was elected in a public election by popular vote. Each campaigned individually and was elected individually. The elected officials of Todd County are not a "group/union". Elected officials do not receive sick or vacation pay at all. The county employee receives sick and vacation pay and is permitted to bank pre-tax money for future retirement health care expenses or disability. The HCSP contribution for the elected officials is not an "insurance benefit". Likewise, it is not "pay". Contributions by the employer into a HCSP are not considered "salary" for PERA purposes because a contribution is considered a type of "fringe benefit". [Exhibit C-13 referencing M.S.A. §353.01, subd. 10(b)(2). Consequently, the settlement with the elected officials does not provide a "greater insurance benefit" or "greater rate of pay" than what is had by Teamster members.

If the county was required to advance $3,000 into a HCSP to each Teamster member, non-union, and AFCME full-time regular employee, Todd County would be required to spend $456,000 every four years. The financial impact of the "Me Too" clause interpreted as the Union reads it would be devastating to the County. Commissioner Goligowski testified that during negotiation of the Collective Bargaining Agreement she never understood or discussed the "Me Too" clause as applied to the "elected officials". The cost implications alone shows that the county's intent in negotiating the language with the Teamsters was that it did not apply to "elected officials". "Elected officials" was not included in the

language of the contract. While the Union negotiators may have intended that "elected officials" were part of the terms "employees" and "group", there was no "meeting of the minds", no "manifest intention" of the County by the language of the contract or intention of the County negotiators to include "elected officials" in the "Me Too" clause. "A[n] [arbitrator] should enforce the manifest intention of the parties". [See John Edward Murray, Jr., *Murray on Contracts 3rd Edition* 56 (The Mitchie Company 1990)]. It is clear the county board did not include and did not intend to include "elected officials" in the "Me Too" clause; and, the county board would not have put itself into such a financial bind by choice or intent considering the total amount of money it had available during contract negotiations i.e. $250,000.

Based on the above rationale, the Union has not shown by a preponderance of the evidence that the "Me Too" clause is intended to be applicable to the "elected officials". The grievance is denied.

Dated: October 26, 2006.

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Joseph L. Daly
Arbitrator